

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1265 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAMKRIPAL ALIAS CHHOTU

RAMDHARI KUSHWAH

Versus

COMMISSIONER OF POLICE

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Appearance:

MR JS RATHOD for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. J.S. Rathod for the petitioner and learned AGP Mr. D.P. Joshi for the respondents

2. The detention order dtd. 30/1/99 passed by the respondent NO. 1 - Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Sec.3(1) of Gujarat Prevention of Anti-social

Activities Act, 1985 (PASA for short), is challenged in the present proceedings under Article 226 of the Constitution of India.

3. The grounds of detention served to the petitioner under Sec. 9(1) of the PASA, copy of which is produced at Annexure-C interalia indicate that three Prohibition Cases vide C.R. NO. 59/98 dtd. 14/2/98, C.R. NO. 208/98 dtd. 26/8/98 and C.R. NO. 5036/99 dtd. 17/1/99 were registered against the petitioner at Nashabandhi Police Station, North Zone and Sardarnagar Police Station, Ahmedabad. That in each case, the countrymade liquor has been seized from the possession of the petitioner. Furthermore, two witnesses on assurance of anonymity have supplied information pertaining to incident dtd. 10/1/99 and 1/1/99 in respect to antisocial activity of the petitioner. That in consideration of the said material, the respondent No. 1 has come to the conclusion that the petitioner is bootlegger within the meaning of Sec. 2(b) of PASA. That enforcement of general provisions of law is insufficient to prevent the petitioner from continuing his antisocial activity which prejudicially affect the maintenance of public order and thereby the detention order is necessary and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds.

It has been contended on behalf of the petitioner that while passing the impugned order, the detaining authority has failed to consider the less drastic remedy like cancellation of bail available under Sec.437(5) of Cr.P.C. whereby the subjective satisfaction has vitiated and the impugned order has rendered invalid.

5. That in the matter of Jubedabibi Vs. State of Gujarat, reported vide `95(2) GLR page 1134, the Division Bench of this Court has expressed the view to the effect that non-consideration of less drastic remedy like cancellation of bail available under Sec. 437(5) of Cr.P.C. amounts to non-application of mind vitiates subjective satisfaction of the detaining authority and rendering the detention order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal NO. 1056/99 decided by this Court on 15/9/99 (Coram C.K. Thakkar and A.L. Dave, JJ).

6. In the instant case, perusal of the ground of

detention disclose that in the penultimate paragraph, the detaining authority has observed that the petitioner is released on bail in all three cases registered against him, however, no indication has been shown to show that there is an apprehension that the petitioner is likely to continue his antisocial activity of bootlegging, no steps were taken or no remedy were considered for cancellation of bail under Sec.437(5) of Cr.P.C. In view of the said fact, I am constrained to hold that the impugned order is invalid on account of said non-application of mind which has vitiated the subjective satisfaction.

7. As the petition succeeds on the above said ground alone, it is not necessary to consider other contentions raised at bar.

8. On the basis of the aforesaid observation, the petition is allowed. The detention order dtd. 30/1/99 passed by the respondent No.1 - Commissioner of Police, Ahmedabad City, Ahmedabad, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Ramkripal alias Chhotu Ramdhari Kushwaha is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent is made absolute.

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